

BERRY.TXT

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1 available to Y. Hata two hours a day or all day?

2 A I need to be available to them whenever they
3 need to ask me something because I feel it's an
4 obligation --

5 Q So you feel that is your obligation to Y.
6 Hata to be available to them at any time they have a
7 question to ask?

8 A Yes. And they normally operate on Monday
9 through Saturday. There's even been times when they
10 have asked me questions on Sunday.

11 Q Okay. Next Exhibit D -- C, I'm sorry.

12 MS. BRONSTER: Last one was --

13 MR. SMITH: Was B.

14 Q (By Mr. Smith) Is Exhibit C a letter that
15 you wrote to C&S Wholesale Grocers, Inc.?

16 A It looks like it, yes.

17 Q Okay. At the bottom of the page, you gave a
18 telephone number of 808-258-7144?

19 A Yes.

20 Q And are you the person who wrote that phone
21 number on there?

22 A I think so.

23 Q Who pays the bill for that telephone number?

24 A I do.

25 Q And how do you pay it? And let's talk about

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1 as of January 2006, did you pay with a check, with
2 cash?

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3 A I don't know offhand.
4 Q You don't remember. who is the provider of
5 that telephone number?
6 A I think it's T-Mobile.
7 Q Do you use a credit card?
8 A I don't have credit cards.
9 Q So we know it wasn't a credit card then?
10 A Yes.
11 Q Do you have any recollection of what was the
12 source of the money? And I don't mean Y. Hata now.
13 I mean what -- how the funds were transferred from
14 Wayne Berry to T-Mobile for that telephone?
15 A No.
16 Q If I asked T-Mobile whose phone number that
17 is, what are they going to tell me?
18 MR. HOGAN: They'll tell you to drop dead.
19 It's none of your business.
20 Q (By Mr. Smith) You may answer.
21 A I don't know.
22 Q Okay. There's a facsimile number of
23 808-356-0372?
24 A Uh-hum.
25 Q who is the provider of that phone number?

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1 A I think that's eFax.
2 Q And who is the owner of the eFax account?
3 A I am.
4 Q Is there a charge that you pay for that?
5 A Yes.
6 Q How do you pay that?
7 A I think I either prepay it or they debit it

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8 from the Bank Atlantic account. I'm not too sure
9 which.

10 Q Okay. As of January 2006, how were you
11 paying that?

12 A I don't know.

13 Q Do you have any records that reflect how
14 that bill gets paid?

15 A I don't know.

16 Q There's -- there is an e-mail address at the
17 top right of Exhibit C. FCS2003.com. Who registered
18 the URL FCS2003.com?

19 A I did.

20 Q Did you provide an address when you
21 registered that URL?

22 A I don't recall.

23 Q How did you pay for the registration of that
24 URL?

25 A I don't recall.

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1 Q Is there a recurring payment involved in
2 that URL?

3 A I think it's like every -- I don't know how
4 it's set up. Every year or two or three or
5 something. Like whatever it is, like 30 or 40 bucks
6 a year, something like that.

7 Q Okay. And do they charge that against a
8 credit card?

9 A I don't know.

10 Q Do you have any record relating to the
11 registration of that URL?

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12 A I don't know. I don't recall.
13 Q Do you own any other URL besides
14 FCS2003.com?
15 A I think I do. I'm just not sure if they're
16 still active.
17 Q What are the ones that you think you may
18 own?
19 A I've got a couple for Y. Hata. I think
20 it's -- there's ymlogistics.com and there's a
21 yhatalogistics.com.
22 Q Any others?
23 A That's all I can think of right now.
24 Q What was the source of the funds used to pay
25 for those URL registrations?

8

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1 A I don't know.
2 Q What is the license fee that Y. Hata pays
3 you?
4 MR. HOGAN: Objection, vague as to time.
5 Q (By Mr. Smith) At the present time.
6 A I don't know offhand.
7 Q Okay. Do you have any understanding of how
8 the amount that Y. Hata pays you is determined?
9 A Yeah. It went through a formula and it's
10 calculated, divided up over a period of time, all
11 that kind of stuff. So I don't know what the license
12 fee component is and that sort of thing.
13 Q Okay. Is there a minimum amount that you
14 receive from Y. Hata?
15 A No. They were -- like I said, we totalled
16 the total amount over a period of years and divided

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17 it up and came to some agreement on what the average
18 monthly payment was going to be.

19 Q Okay. And so you receive the same amount
20 every month from them?

21 A Pretty much, yeah.

22 Q Well, you say pretty much. Is there
23 variables that determine how much you get?

24 A Yes. Sometimes they skip a month.

25 Q Okay. You're owed the same amount every

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1 month regardless of whether they're late in payment?

2 A A different question, yes.

3 Q The answer is yes, you get a flat amount
4 every month?

5 A Yes.

6 Q And it doesn't vary depending on how many
7 questions they ask you or how much time you take in a
8 particular month to respond to their questions?

9 A I guess it could but I don't.

10 Q Up to now, it has not varied -- the amount
11 they pay you has not varied based on any sort of
12 amount of time you spend?

13 A No.

14 Q What approximately is that monthly number?

15 A \$5,000 something.

16 Q So going back to these bank statements that
17 show over \$20,000 moving through your account in
18 various months, what's the source of those funds?

19 A That would be Y. Hata.

20 Q Okay. Are they paying you 20,000 in one

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21 month or are they five months behind or what? How do
22 you reconcile the \$5,000 a month payment with the
23 larger amounts moving through your account in April,
24 May, June of 2007?

25 A They -- as I was telling you, I'm trying to

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1 get new business. And in talking to them, I
2 discounted a balance of payment over a period of time
3 to them for bulk payment to buy new software, things
4 so I can get new business.

5 Q If I understand you correctly, you -- they
6 gave you a larger lump sum payment and then for some
7 number of months in the future, there won't be any
8 payment made, is that right?

9 A Correct.

10 Q I see. And is that agreement contained in
11 the materials that you've brought today?

12 A No.

13 Q Where is that agreement?

14 A It doesn't exist anywhere to my knowledge.

15 Q It was an oral agreement only?

16 A It was something I asked them if they would
17 help me 'cause I needed this new business and they
18 said they wanted something in exchange for it and we
19 worked out a discount that they were happy with and
20 it satisfied both parties for the time being.

21 Q Okay. So how much did they -- explain that
22 agreement. How much did they agree to give you?

23 A I don't recall the exact amount.

24 Q Approximately.

25 A They're fairly reflected in those couple

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1 statements.

2 Q Approximately how much?

3 A I don't know. Something in the 50 to 60
4 range, something like that.

5 Q They agreed to give you somewhere between 50
6 and \$60,000 in exchange for how many months of no
7 payments?

8 A I don't know. But they got a discount on
9 the entire license fee that was originally agreed to
10 in exchange for that.

11 Q How much was the discount?

12 A I don't recall the number.

13 Q Approximately how much?

14 A Could have been 10, 20 percent, something
15 like that.

16 Q When was this agreement reached?

17 A We started talking about it in late 2006.

18 It was part of the move to Florida to get new
19 business and I asked them if they would be agreeable
20 to as I saw what was coming if they worked with me so
21 I could try and get some of this new business. And I
22 don't remember exactly when we came to a final
23 agreement but they were agreeable from the beginning
24 when I told them I was going to go after new business
25 in another part of the country.

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1 Q And you have absolutely no record that

2 reflects the amount that you agreed to discount of

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3 their obligation to you?

4 A No. These are good people. Whatever it
5 was, it was fair at the time and we discussed it and
6 it was acceptable to everyone. I don't recall
7 offhand. You know, Y. Hata, they're good people.
8 This is a little different.

9 Q So does Y. Hata possess any documents that
10 reflect the terms of this agreement?

11 A I don't know.

12 Q Okay. Was the agreement entered before
13 April of 2007?

14 A Yes.

15 Q So it's between January of 2007 and April?

16 A I don't know exactly when but as I told you,
17 when the medical situations came up last summer over
18 a year ago, I had some meetings with Y. Hata where I
19 discussed the situation and I was looking for new
20 business and things. And that's where the agreement
21 started.

22 Q Who were you meeting with at Y. Hata?

23 A I think it was probably Brian Marting.

24 Q When is the next payment that you expect to
25 receive from Y. Hata?

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1 A I don't know.

2 Q Do you expect to receive a payment this
3 month?

4 A Other than this in the future, yes.

5 Q Do you expect to receive any payment for the
6 month of September?

7 A I don't know.

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8 Q Do you expect -- I'm only asking what you
9 expect, not whether you know. Do you expect to
10 receive a payment for the month of September?

11 A I'm not sure.

12 Q Do you expect to receive any payments from
13 Y. Hata through the end of the year?

14 A I'm not sure.

15 Q At the time you made your agreement with Y.
16 Hata, isn't it a fact that you were aware that
17 various parties had made motions to recover attorney
18 fees from you?

19 A Not sure. I don't remember when the motions
20 were filed.

21 Q So you may have been aware and you may not
22 have been aware? You don't know?

23 A I'm not sure. I'm not sure that had
24 anything really to do with it one way or the other.

25 Q You're a party to a divorce proceeding, is

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1 that right?

2 A No. I'm in the process of filing an
3 annulment. That's all I'm aware of.

4 Q Have you ever prepared any asset information
5 in connection with a divorce proceeding?

6 A No.

7 Q You've never provided any assets or income
8 information in connection with a divorce?

9 A Not that I'm aware of.

10 Q Now, you said there's already one divorce
11 matter pending, is that right?

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12 A I don't know. You tell me.
13 Q Okay. You're not aware of one. Okay.
14 So I don't forget, I would like to make the
15 document that you brought with you an exhibit so
16 let's make that next in order, the document that you
17 brought with you Bates stamped.
18 (Exhibit D marked for identification.)
19 MR. HOGAN: Can we just go off the record
20 for a second?
21 (Off the record colloquy.)
22 MR. HOGAN: Go back on.
23 Q (By Mr. Smith) Okay. E is the document that
24 I'm giving to the court reporter.
25 A Okay.

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1 Q My time is limited so I'm going to try to
2 ask very specific questions and I'll appreciate very
3 specific responses.
4 A I'll try.
5 Q Okay. I'd like to start with number 1 on
6 Exhibit E which refers to something called USAGE.EXE.
7 Are you the author of that item?
8 A Yes.
9 Q Have you ever been paid any money for
10 authoring it?
11 A I think so.
12 Q Who made the payment?
13 A I think it was probably IPC Enterprises.
14 Q How much was the payment?
15 A I have no idea. It was a long time ago.
16 Q When was the payment made?

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17 A I have no idea.
18 Q When was the last time you received any
19 payment from IPC Enterprises for this item number 1?
20 A I have no idea.
21 Q Was it more than ten years ago?
22 A Yes.
23 Q Do you have any expectation that you're ever
24 going to receive any money, any more money for item
25 number 1?

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1 A There's always a chance.
2 Q Has anyone ever offered you -- other than
3 IPC Enterprises, has anyone ever offered you any
4 money for item number 1?
5 A No.
6 Q And when I say offered you money, I mean for
7 a license or to buy it from you or for any other --
8 any other way connected to this item USAGE.EXE?
9 A No.
10 Q Item number 2 refers to something called
11 Except.exe. Are you the author of Except.exe?
12 A Yes.
13 Q Have you ever been paid any money for
14 Except.exe?
15 A Yes.
16 Q Who was the payer?
17 A IPC Enterprises.
18 Q Anybody besides IPC Enterprises ever paid
19 you anything for Except.exe?
20 A Not that I can recall.

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21 Q when was the payment from IPC Enterprises?
22 A I don't know.
23 Q was it more than ten years ago?
24 A Yes.
25 Q Has anyone offered you any money for

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1 Except.exe whether the use or licensing or ownership
2 of it other than IPC?
3 A No.
4 Q Where is IPC Enterprises located?
5 A They were in Hawaii.
6 Q Where are they now?
7 A I have no idea.
8 Q Who was in charge of IPC Enterprises?
9 A When?
10 Q When you were doing business with them.
11 A Jeff Itoman.
12 Q Item number 3, MVRAPP.EXE. Have you ever
13 been paid any money for MVRAPP.EXE?
14 A Yes.
15 Q Who made the payment?
16 A IPC.
17 Q How much did they pay?
18 A I don't know.
19 Q Was the payment made more than ten years
20 ago?
21 A Yes.
22 Q Since -- have you ever been offered anything
23 for MVRAPP.EXE by anyone other than IPC?
24 A No.
25 Q Have you ever attempted to market the first

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1 three items that we've talked about to anyone other
2 than IPC?

3 A I've made an attempt to market derivatives
4 of those.

5 Q Has anyone ever agreed to pay you anything
6 for derivatives of those?

7 A I don't know.

8 Q Okay. who have you offered -- who have you
9 offered derivatives of those to?

10 A I'm not sure. I can just remember using
11 portions of the code in making derivatives. I
12 just -- I can't recall at this point what I used or
13 whether they turned into a sales product or not or
14 who it was.

15 Q So you can't remember --

16 A No.

17 Q -- receiving any money for those other than
18 what you got from IPC?

19 A No, not specifically.

20 Q Are you the author of CLKDDE.EXE?

21 A Yes.

22 Q Have you ever been paid any money for
23 CLKDDE.EXE?

24 A Yes.

25 Q By whom?

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1 A IPC Enterprises.

2 Q How much were you paid?

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3 A I have no idea.
4 Q Was it more than ten years ago?
5 A Yes.
6 Q Has anyone offered you anything for it since
7 then?
8 A Same answer. There's been derivatives made
9 and I don't know if there's something I sold or not.
10 Q The answer is maybe but you don't know?
11 A That's correct.
12 Q CLKCOM.EXE, are you the author?
13 A Yes.
14 Q Have you ever been paid anything for it?
15 A Yes.
16 Q Who paid you?
17 A IPC Enterprises.
18 Q How much did they pay you?
19 A I don't know.
20 Q Was the payment more than ten years ago?
21 A Yes.
22 Q And is it correct that you may have
23 attempted to market it since that time or a
24 derivative of it but you don't know whether you ever
25 received any money for it?

8

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1 A That's correct.
2 Q Number 6, TIMEDB2.DDL. Are you the author?
3 A Yes.
4 Q Have you ever been paid anything for it?
5 A Yes.
6 Q By whom?
7 A IPC Enterprises.

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8 Q Was the payment more than ten years ago?
9 A Yes.
10 Q How much was it?
11 A I have no idea.
12 Q Is it correct that although you may have
13 attempted to market a derivative of TIMEDB2.DDL, you
14 have no knowledge whether you've ever received any
15 income from it from anyone other than IPC?
16 A No. I actually -- that's a time accounting
17 database structure for time clocks. And I used a
18 derivative of this structure at API for the terminals
19 to record time. There was no separate charge and
20 there was no separate money recovered from using that
21 but I did implement a separate time clock system
22 using this.
23 Q Okay. So you obviously used API?
24 A Yes.
25 Q Did API pay you anything for it?

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1 A No. It was just something I put out to make
2 the work easier.
3 Q Other than IPC and API, have you received
4 any money from anybody else for TIMEDB2.DDL?
5 A No. As I mentioned API did not pay any
6 money directly for this.
7 Q Next one, PAYMENT.EXE. Have you ever -- are
8 you the author of PAYMENT.EXE?
9 A Yes.
10 Q Have you ever received any money for it?
11 A Yes.

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- 12 Q Who paid you the money?
- 13 A That would have been IPC Enterprises.
- 14 Q How much were you paid?
- 15 A I don't know.
- 16 Q Was the payment over ten years ago?
- 17 A Yes.
- 18 Q Since that time, is it correct that you're
- 19 not able to identify anybody who's paid you anything
- 20 for the use of PAYMENT.EXE?
- 21 A That's correct.
- 22 Q Next one, MASTER.EXE. Are you the author?
- 23 A I think so but I don't -- just going by the
- 24 record here, I don't remember this program.
- 25 Q Is it correct that you have no memory of

‡

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- 1 ever receiving any money as a result of authoring
- 2 MASTER.EXE?
- 3 A I'm not sure 'cause I don't remember the
- 4 program specifically.
- 5 Q Okay. So you just don't know if you ever
- 6 made any money from that program?
- 7 A Right.
- 8 Q Number 9. Are you the author of VIEW.EXE?
- 9 A I think so but now you're getting into a
- 10 period of time I'm not sure which programs they are
- 11 without -- I can't remember which projects they were
- 12 attached to.
- 13 Q Okay. So as you sit here today, you have no
- 14 knowledge of ever receiving any income from VIEW.EXE?
- 15 A I just don't recall. I'd have to look at
- 16 the program and see what the project was.

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17 Q Okay. But like I say, as you sit here
18 today, you don't know?

19 A I can't recall.

20 Q Is it correct that in the last ten years,
21 you have not received any money from VIEW.EXE?

22 A I can't recall.

23 Q Number 10, CAPTURE.EXE. Are you the author?

24 A Again, that's one of these programs I can't
25 place to the project right now.

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1 Q So you don't know what that is or whether
2 you ever made any money from it?

3 A Right.

4 Q Number 11, MVRDB.DBD. Are you the author?

5 A Yes.

6 Q Have you ever made any money from it?

7 A Yes.

8 Q Who was the payer?

9 A IPC Enterprises.

10 Q How much did they pay you?

11 A I don't know.

12 Q Was it more than ten years ago?

13 A Yes.

14 Q Have you ever received any money from it
15 since that time?

16 A Not that I can recall.

17 Q Number 12, CALL.EXE. Are you the author?

18 A Yes.

19 Q Have you ever received any money from it?

20 A Yes.

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21 Q How much?
22 A I have no idea.
23 Q who's the payer?
24 A IPC Enterprises.
25 Q How long ago was the payment?

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1 A I have no idea.
2 Q Was it over ten years ago?
3 A Yes.
4 Q Since that time, have you received any
5 money -- since the time you received something from
6 IPC, have you received any money related to CALL.EXE?
7 A No.
8 Q Number 13, UPDATE: KNB version 4. Are you
9 the author?
10 A I think so.
11 Q Have you ever received any money for it?
12 A I think so.
13 Q Who was the payer?
14 A I think it was probably IPC.
15 Q Was the payment over ten years ago if it was
16 made?
17 A Yes.
18 Q And since that time, have you received any
19 money related to UPDATE: KNB version 4.0?
20 A No.
21 Q Number 14, STATUS: KNB version 4.0. Are you
22 the author?
23 A I think so.
24 Q Have you ever received any money for it?
25 A I think so.

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1 Q From whom?
2 A It would be IPC.
3 Q Do you know how much?
4 A No.
5 Q Have you received any money related to
6 STATUS: KNB version 4.0 since the payment you
7 received from IPC?
8 A I don't think so.
9 Q Number 15, FlemingPO. I take it you agree
10 you're the author of that?
11 A Yes.
12 Q Have you ever received any money from anyone
13 for the use of FlemingPO?
14 A I guess. The Hawaiian Express settlement,
15 would that be considered?
16 Q Okay. You can --
17 A Kind of like loss license fees.
18 Q Okay. So we're aware of the HEX settlement.
19 Any other money you've ever received in connection
20 with FlemingPO?
21 A Not that I'm aware of.
22 Q Have you made any efforts to market
23 FlemingPO to anyone?
24 A Yeah. I made derivatives and -- sure.
25 Q And has any of those ever resulted in any

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1 income to you?
2 A A derivative of it is -- I use in -- part

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3 and parcel in the small section today in Y. Hata's
4 stuff.

5 Q Okay.

6 A Some of the derivatives I've used in those
7 test beds with Horizon I told you about.

8 Q But you didn't get any money from what you
9 did with Horizon?

10 A No, I didn't. I'm just thinking out loud.

11 Q That's fine.

12 A And even with Y. Hata, I'm only getting --
13 point to it and say that's specifically not a dollar
14 for doing, you know, something like that. It's all
15 kind of bundled in.

16 Q Okay. But your testimony is that something
17 that's derived from FlemingPO is part of what you're
18 licensing to Y. Hata?

19 A Very small piece, yeah.

20 Q LOOKUP, if you will, we're on number 16.

21 LOOKUP: KNB version 4.0.

22 A Okay.

23 Q Are you the author?

24 A I think I am.

25 Q Have you ever received any money for it?

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1 A I think so.

2 Q From whom?

3 A Be IPC.

4 Q And the payment was received over ten years
5 ago?

6 A Yes.

7 Q And you don't know how much it was?

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8 A No.
9 Q Have you ever received any money from anyone
10 in connection with LOOKUP: KNB version 4.0 since IPC?
11 A Not that I can recall.
12 Q 17, MVRDBD.DBD. Are you the author?
13 A Yes.
14 Q You ever received any money for it?
15 A Yes.
16 Q From whom?
17 A Be IPC.
18 Q Are your answers the same as for the other
19 IPC --
20 A Uh-hum.
21 Q -- programs?
22 A Yes.
23 Q Number 18, MVRDOS.exe. Are you the author?
24 A Yes.
25 Q Have you ever received any money for it?

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1 A Yes.
2 Q From whom?
3 A That be IPC.
4 Q Are the rest of your answers the same as the
5 other IPC programs?
6 A Yes.
7 Q Number 19, DUPLO.exe. Are you the author?
8 A Yes.
9 Q Have you ever received any money for it?
10 A Yes.
11 Q From whom?

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- 12 A Be IPC.
- 13 Q Are the rest of your answers the same
- 14 regarding DUPLO.exe?
- 15 A No. Code I wrote and DUPLO I used a lot of
- 16 places.
- 17 Q Have you ever received any money for
- 18 DUPLO.exe?
- 19 A For derivatives of it, yeah.
- 20 Q From whom?
- 21 A I don't recall.
- 22 Q When's the last time you received any money
- 23 in connection with DUPLO.exe?
- 24 A More than ten years ago.
- 25 Q EMBLEM.exe, are you the author?

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- 1 A Yes.
- 2 Q Have you ever received any money for it?
- 3 A Yes.
- 4 Q Who paid it?
- 5 A Be IPC.
- 6 Q Has anybody else ever paid you anything in
- 7 connection with EMBLEM.exe?
- 8 A Not that I can recall.
- 9 Q Not that you can recall?
- 10 A Not that I can recall.
- 11 Q And your other answers are the same as for
- 12 the other software that IPC paid you something for?
- 13 A Pretty much except for the few exceptions I
- 14 pointed out like with DUPLO --
- 15 Q I'm asking about for EMBLEM specifically,
- 16 the answers would be --

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17 A But DUPLO was also IPC but it had
18 exceptions.

19 Q Okay.

20 A And there were a couple others like that
21 too.

22 Q Okay. So let's move on to the next page
23 here. Number 21, freight control system. I take it
24 you're the author?

25 A Yes.

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1 Q And you have received money for -- in
2 connection with freight control system from Y. Hata?

3 A No.

4 Q No?

5 A No.

6 Q Have you -- and that's because this is the
7 old software, the 1993 software, correct?

8 A Yes.

9 Q And you have written a different program
10 that's actually used by Y. Hata, right?

11 A Yes.

12 Q So have you ever received any funds in
13 connection with this item that is registered as
14 number 21?

15 A I guess the HEX settlement would fall into
16 that.

17 Q Anything else?

18 A That I can recall --

19 MR. HOGAN: I'm going to object vague as to
20 what received means, whether it means received a

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21 judgment, I guess, a local infringer --

22 Q (By Mr. Smith) Fair enough. We can
23 certainly leave out -- I'm not trying to trick you
24 regarding your litigation. I'm only asking whether
25 you received any payments.

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1 So have you ever been able to -- have you
2 ever received any money from anyone other than the
3 HEX settlement in connection with freight control
4 system registration TX579445?

5 A I don't think so.

6 Q Same question for number 22, Prepaid vendor
7 invoice for Crystal reports.

8 A Same thing. Anything related to FCS 1993, I
9 think the only money that's ever been paid in
10 connection with them related to the HEX settlement.

11 Q 23, FCS1993 SQL export queries used to
12 export and translate freight control system data,
13 database structure and data organization to text,
14 CVS, XLS and MDB file formats. Are you the author?

15 A Yes.

16 Q Have you ever received any money for this?

17 A Again, as I stated before, only tangentially
18 with the collection from HEX if we can -- if that's
19 considered to be applied towards us.

20 Q Okay. Number 24, FCS1993, terminal
21 reporting system, version 1.0 Have you ever received
22 any money from that?

23 A Only in relation to HEX as we talked about
24 before.

25 Q Okay. So all of these have nothing to do

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1 with Y. Hata, is that right?
2 A That's correct.
3 Q And --
4 A You say "all of these". Just up to that
5 point or further on --
6 Q Everything through number 24.
7 A No. I said I pulled that one little piece
8 out.
9 Q You did say FlemingPO?
10 A Yeah. There was a little piece that I
11 pulled out of there.
12 Q All of these other than FlemingPO through
13 number 24 are unrelated to what's being used at Y.
14 Hata, right?
15 A Yes.
16 Q Have you -- number 25, crystal -- FCS1993,
17 crystal report, pallet tags, version 1.0. Are you
18 the author?
19 A Yes.
20 Q Have you ever received any money from its
21 use?
22 A Only the tangential payment from HEX.
23 Q And again, that has nothing to do with Y.
24 Hata?
25 A No.

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1 Q Number 26, FCS1991, crystal report,
2 receiving report, version 1.0. Have you ever

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3 received any money from that?

4 A Only related to HEX.

5 Q 27, FCS1991, crystal report, profitability
6 report, version 1.0. Have you ever received any
7 money for that?

8 A Only related to HEX.

9 Q And there's nothing derived from these
10 running at Y. Hata today?

11 A No.

12 Q Number 28, FCS1993, EDI 875 PO database
13 program, version 1.0. Are you the author?

14 A Yes.

15 Q Have you ever received any money from
16 creating that?

17 A Only related to the loss license fee
18 recovery from HEX or the settlement or how you want
19 to characterize it.

20 Q Number 29, FCS1993 container inventory
21 database program, version 1.0. Are you the author?

22 A Yes.

23 Q The date for number 29 as well as number 28
24 that it was created says 2993. Is that the correct
25 date?

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1 A I don't think so.

2 Q What is the correct date?

3 A I don't know. I'd have to look at the
4 certificate.

5 Q You don't know when you authored this
6 program?

7 A Not off the top of my head. It was sometime
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8 in the late 1990s.

9 Q Okay. Other than the settlement with HEX,
10 is it true that you never received any money for it?

11 A That's true.

12 Q Anybody ever offered you any money for it?

13 A I guess you do from time to time but --

14 Q Other than settlement offers?

15 A Oh --

16 Q In the litigation, has anybody ever offered
17 you anything?

18 MR. HOGAN: Ones that they actually mean --

19 THE WITNESS: No.

20 Q (By Mr. Smith) Other than for everything
21 we've talked about up to number 29, has anybody ever
22 offered you any money for it other than settlement
23 offers in litigation?

24 A Yeah. We talked about some exceptions in
25 there.

†

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1 Q So you remind me what --

2 A Yeah. There were somewhere like the DUPRO
3 as an example.

4 Q Where you've actually used it with Y. Hata?

5 A Well, sure. And a lot of times when
6 programs design something new, that's one of the
7 reasons you register it because you're allowed to
8 take to make derivatives on some, you know.

9 Q For all of the ones where you said you
10 don't -- you haven't received any money, has anyone
11 offered you money that you didn't accept in

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12 connection with any of the programs that we talked
13 about up to now through number 29 and again excluding
14 settlement offers?

15 MR. HOGAN: You're not talking about a jury
16 offering money? This is excluding judgments?

17 Q (By Mr. Smith) Outside of the litigation.

18 A I think in just a -- I think in just a
19 business sense, if that's what you mean, I think the
20 answer would be yes. Do I know who they are? No.
21 But my sense says it's yes.

22 Q So you don't know who has made you such an
23 offer or how much they offered for any of the
24 programs that we've talked about up to now except
25 FlemingPO which is part of the Y. Hata package or a

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1 derivative of it?

2 A No. There have been situations over the
3 years where people have asked to take something that
4 already existed.

5 Q Okay. And those would be among the first 29
6 programs that we've talked about here?

7 A Yes. Even if people didn't enunciate it by
8 specifically what program it was, it was implied in
9 general discussions.

10 Q And is it correct that you're not able to
11 identify any of those people who --

12 A I can't remember.

13 Q And is it correct that you're not able to
14 say how much they offered?

15 A No. Not specifically, no.

16 Q You able to say generally how much was

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17 offered?

18 A No.

19 Q Number 30, FCS1993 crystal report, daily
20 transportation schedule, version 1.0. You're the
21 author?

22 A Yes.

23 Q Other than the HEX settlement, have you ever
24 been paid anything for it?

25 A No.

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1 Q Other than the HEX settlement, have you ever
2 been offered anything for it?

3 A I may have been. I don't recall.

4 Q Number 31, FCS1993 crystal report, sailing
5 chart, version 1.0. You're the author?

6 A Yes.

7 Q Other than the HEX settlement, have you ever
8 been paid anything for it?

9 A No.

10 Q Other than the HEX settlement, have you ever
11 been offered anything for it?

12 A I may have been. No, I haven't been paid
13 anything. I may have been offered something but.

14 Q But you're not able to say by whom?

15 A No.

16 Q And you're not able to say how much was
17 offered?

18 A No.

19 MR. HOGAN: I'll state for the record that
20 his agent was offered -- Jamie Sprayregen offered

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21 money in Delaware --

22 MR. SMITH: Okay. I assume that was
23 probably in the context of litigation and I am
24 excluding any settlement offers.

25 Q (By Mr. Smith) Number 32, FCS1993, crystal

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1 report, trucking FTL, version 1.0. You're the
2 author?

3 A Yes.

4 Q Have you ever been paid anything for it
5 other than the HEX settlement?

6 A No.

7 Q Have you ever been offered anything for it
8 other than the HEX settlement?

9 A Again, it falls into that category when
10 you're talking about freight systems. People talk
11 about what was and what is or something new, yeah, so
12 I probably was.

13 Q You're not able to say who made you an offer
14 for it?

15 A No.

16 Q And you're not able to say how much the
17 offer was?

18 A No.

19 Q And you -- whatever the offer was, you
20 didn't accept it, correct?

21 A Correct.

22 Q 33, FCS1993 crystal report, trucking LTL,
23 version 1.0. Are you the author?

24 A Yes.

25 Q Other than the HEX settlement, have you ever

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1 been paid anything for it?

2 A No.

3 Q Other than the HEX settlement, have you ever
4 been offered anything for it?

5 A Same as the answer to the previous one, 32.

6 Q And if I understood your answer correctly,
7 you may have been offered something but you don't
8 know from whom and you don't know how much?

9 A Right.

10 Q Number 34, FCS1993, crystal report, load
11 plan, version 1.0. You're the author?

12 A Yes.

13 Q Other than the HEX settlement, have you ever
14 been paid anything for it?

15 A No.

16 Q Other than the HEX settlement, have you ever
17 been offered anything for it?

18 A Again, be the same as the previous answers.

19 Q which is it's possible but --

20 A It's possible in the context of business
21 negotiations people comparing old to current doing
22 something.

23 Q It's possible but you don't know who would
24 have made the offer or how much they would have
25 offered, correct? Sorry --

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1 A Yes. I'm sorry.

2 Q The answer is yes. Okay.

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3 35. Is your answer the same? You're the
4 author, you've never been offered anything for it
5 except in the HEX settlement and you've never been
6 offered anything from anybody else that you can
7 recall as you sit here today?

8 A Correct.

9 Q Is the same true for number 36?

10 A Correct.

11 Q Is the same true for number 37?

12 A Yes.

13 Q Have you submitted anything to the United
14 States Copyright Office other than the 37 items
15 listed on Exhibit E?

16 A I think so.

17 Q What else?

18 A I don't recall.

19 Q Well, you named one thing today when you
20 said you had sent the copyright office a copy of the
21 document that you call Second Addendum, right?

22 A I think so.

23 Q What else?

24 A As I say, I don't recall. And I'm not sure
25 if I actually sent that or if it's waiting to be

†

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1 sent. But it is packaged up to go. But there has
2 been communication regarding it as to how to file it.

3 Q Okay.

4 A I might have a copy of it. I think I did
5 give a copy.

6 Q I take it you considered that document to be
7 an asset of yours?

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8 A I'm not sure. I know it's a liability of
9 yours.
10 Q And to whom is that liability owed?
11 A Oh, me.
12 MR. SMITH: Okay. I have a few minutes
13 left. I want to take a quick recess and finish.
14 (Recess taken.)
15 Q (By Mr. Smith) Mr. Berry, you made reference
16 to seeking an annulment. Where has that been filed?
17 A I'm in the process of filing it in Las
18 Vegas.
19 Q Okay. So nothing has been filed to date
20 regarding --
21 A I don't know how that works. You fill out
22 the form and things.
23 Q Are you represented by counsel in that
24 matter?
25 A No.

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1 Q You're doing that pro se? Have you filled
2 out the forms already?
3 A Yes.
4 Q Have you sent them someplace?
5 A That's what I'm not too sure 'cause you do a
6 lot of this stuff on the internet and I don't know
7 how -- I've not done this before.
8 Q I'm just asking what you have done.
9 A I filled out a form and I made some phone
10 calls to immigration and to guys in Vegas and I've
11 done, you know, I think a lot of things. I've

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12 basically got a -- I got to make some copies and send
13 it and I think it's pretty much done.

14 Q Have you consulted with counsel regarding
15 this?

16 A No.

17 Q Have you directly or through an agent
18 communicated with your wife's counsel?

19 A No. I don't think so.

20 MR. HOGAN: Can you identify the counsel so
21 we'll know who you're talking about?

22 THE WITNESS: When did you talk to her?

23 MR. SMITH: I've spoken with her a couple
24 times but that's -- I'm the guy that asks the
25 questions today.

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1 MR. HOGAN: I'll state for the record that I
2 did speak with her and she said you informed her that
3 you were Wayne Berry's attorney. So we'll put that
4 on the record, oh, king of ethics.

5 THE WITNESS: That's a tough one.

6 Q (By Mr. Smith) So have you, to your
7 knowledge, have you communicated with Ms. Brawley
8 regarding your domestic proceeding?

9 MR. HOGAN: What was the question?

10 MR. SMITH: Whether to his knowledge, he has
11 through a representative, communicated with Ms.
12 Brawley regarding his domestic proceeding.

13 MR. HOGAN: And define domestic proceeding.

14 MR. SMITH: Divorce, annulment or any
15 similar matter.

16 THE WITNESS: No. It's my understanding
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17 that shortly when they got the stuff together and
18 it's reviewed, they serve it and I don't have to do
19 that stuff.

20 Q (By Mr. Smith) who, do you understand, is
21 going to serve something -- this is something in Las
22 Vegas?

23 A Yes.

24 Q It's your understanding that they're going
25 to serve your wife with it?

†

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1 A Yes.

2 Q That's what the court in Las Vegas is going
3 to take care of that?

4 A I don't know who does what.

5 Q Okay. Did you provide any information
6 relating to your assets in connection with what
7 you've sent to Las Vegas?

8 A No. It's an annulment.

9 Q So the answer is no?

10 A I don't -- who knows what the judge will ask
11 for but I haven't yet.

12 Q So far you've provided nothing related to
13 your assets or your income?

14 A Right.

15 MR. SMITH: That's all the questions I have.
16 Thank you for coming.

17 (Concluded at 2:35 p.m.)

18 --oo0oo--

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1 WITNESS' CERTIFICATE

2 I, WAYNE BERRY, certify that I have read the
3 foregoing typewritten pages 1 to 118, inclusive, and
4 corrections, if any, were noted by me, and the same
5 is now a true and correct transcript of my testimony.

6 Dated: This ____ day of _____,
7 2007.

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WAYNE BERRY

17 Signed before me
18 this _____ day of _____, 2007.

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1 STATE OF HAWAII)
2 CITY AND COUNTY OF HONOLULU) SS.

3 CERTIFICATE

4 I, PRISCILLA GONZAGA, a Notary Public of the
5 State of Hawaii, do hereby certify:

6 That WAYNE BERRY, the witness whose
7 deposition is contained herein, appeared before me on
8 August 13, 2007;

9 That prior to being examined, he was by me
10 duly sworn;

11 That the foregoing represents, to the best
12 of my ability, a full, true and correct transcript of
13 the proceedings had in the above-entitled cause;

14 That prior to the filing of the deposition,
15 the witness was notified of his right to make any
16 corrections and/or changes he deems necessary to
17 render his testimony true and correct;

18 That if the deposition is filed without the
19 witness' signature, the witness has failed to appear
20 and the deposition is therefore filed under a waiver
21 of signature pursuant to Rule 30 (e) of the Hawaii
22 Rules of Civil Procedure;

23 That I am not attorney for and not related
24 to any of the parties hereto nor in any way
25 interested in the outcome of said action.

Dated: This ____ day of _____,
2007.

Priscilla Gonzaga, CSR No. 127
My commission expires: 8/19/10